



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: M.C. Dean Electrical Contracting, Inc.
File: B-228542
Date: December 21, 1987

DIGEST

Where a canceled invitation for bids (IFB) has been converted to a request for proposals (RFP), protest that offeror whose bid was allegedly nonresponsive to the IFB should not be permitted to compete under the RFP is denied, since the applicable regulation only precludes the participation of nonresponsive bidders and the firm in question was considered responsible.

DECISION

M.C. Dean Electrical Contracting, Inc., protests award of a contract under request for proposals (RFP) GS-11P87MKC7475 "Neg" issued by the General Services Administration (GSA) for PCB removal and retrofit of transformers at a heating plant in Washington, D. C. An invitation for bids (IFB) was converted to this RFP when all acceptable bids were determined to be unreasonably high. Dean protests GSA's award to an offeror who allegedly submitted a nonresponsive bid under the IFB.

We deny the protest.

Under the IFB, GSA received five bids with Dean as the second low bidder. GSA determined that the apparent low bidder, a small business concern, was not responsible; that firm, however, elected not to file for a certificate of competency with the Small Business Administration. All remaining bids exceeded the prospectus limitation of \$500,000 and the budget. Consequently, in accordance with the Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 14.404-1(e) and 15.103 (1986), all remaining bids were rejected and the solicitation was converted to an RFP. Three of the firms who bid under the original IFB submitted offers under the RFP. Dean again was second low.

Upon review, the apparent low offeror, Sun Environmental, Inc., was found to be responsible based upon its successful

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completion of four similar projects. It also had been found to be a responsible bidder on several other PCB removal/transformer replacement projects awarded by GSA in September 1987.

Dean alleges, however, that Sun's bid was not responsive to the original IFB and therefore the firm should not have been allowed to compete under the RFP.

The IFB had required each bidder to submit with its bid information concerning its capabilities, experience (including a listing of at least three prior similar projects), and key staff, for the purpose of assessing the firm's responsibility. Sun attached to its bid a list of prior similar projects which it had performed; an outline of its approach to project management, including a list of key personnel, together with their resumes; a "Statement of Experience;" a one-page "Conceptual Description" of the procedures for completing the project; and a customer reference list.

In the course of its "conceptual description," Sun stated that it would accept title to waste materials "at the time it initiates loading the waste materials and transformers at the customer's premises." (Emphasis added.) Dean claims that this statement conflicted with the IFB specification's "Indemnification" clause which provided that the "Contractor shall assume legal title to all PCB-contaminated equipment and material" removed. The protester alleges that the effect of Sun's statement would be to allow it to perform the contract "free of risk" in the transformer vault area, contrary to the IFB. Sun did not include the conceptual description with its offer under the RFP.

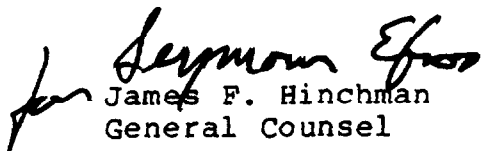
GSA maintains that the responsiveness of Sun's bid under the original IFB is irrelevant to GSA's acceptance of a subsequent offer from the firm under the RFP. We agree with GSA.

Assuming, without deciding, that Sun's inclusion of the "title" statement made its bid nonresponsive, Sun was not prohibited from competing under the RFP. The applicable regulation, FAR, 48 C.F.R. § 15.103, provides that where an IFB is canceled and negotiation is to be used, the only conditions on pursuit of negotiation are that prior responsible bidders to the original IFB be given notice and a reasonable opportunity to negotiate; that any negotiated price be the lowest offered by any responsible bidder; and the price must be lower than the lowest rejected bid of a responsible bidder under the original IFB. Thus, only nonresponsive bidders are precluded from participating under an RFP and GSA properly allowed Sun to compete again.

We dealt with a similar situation in Sylvan Service Corp., B-222482, July 22, 1986, 86-2 CPD ¶ 89. In Sylvan, an IFB had been converted to an RFP when the original bids exceeded the government estimate. There we held that a nonresponsive bidder and a bidder who had withdrawn its bid due to a bid mistake under the original IFB, were not precluded by FAR, 48 C.F.R. § 15.103, from bidding on the subsequent RFP.

Dean urges us to reexamine the applicable regulation and the Sylvan case, however, we decline to do so. Our review of the Sylvan file shows the same arguments made here were also made, and carefully considered, in that case. We can perceive no intent in the language of FAR, 48 C.F.R. § 15.103, to preclude nonresponsive bidders from participating in a converted solicitation. Allowing responsible, yet nonresponsive, bidders to participate tends to foster the policy of increased competition. Barring otherwise responsible bidders does not.

The protest is denied.


James F. Hinchman
General Counsel